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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

DWIGHT A. STATEN,

Plaintiff and Appellant,

v.

ARTHUR CALDERON et al.,

Defendants and Respondents.

F058400

(Super. Ct. No. CV255031)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Dwight A. Staten, in pro. per., for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, Rochelle C. East, Assistant Attorney General, David A. Carrasco and Jaime M. Ganson, Deputy Attorneys General, for Defendants and Respondents.

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Dwight A. Staten, a California prison inmate, brought an action for damages against prison officials who worked at the California Correctional Institution, Tehachapi (CCI), alleging that they denied him appropriate dental care and pain medication when he was an inmate at that facility.

Defendants filed a motion for summary judgment. According to defendants, the trial court granted the motion on the grounds that (1) Staten failed to exhaust his administrative remedies, (2) Staten failed to establish the necessary elements of a negligence claim, (3) no violation of the Fifth or Fourteenth Amendment occurred, (4) Staten failed to establish deliberate indifference necessary to prove an Eighth Amendment violation, and (5) Staten was not entitled to punitive damages.

On appeal, Staten contends that the trial court erred by (1) denying his motion to compel further discovery responses, (2) denying his request to continue the hearing on the motion for summary judgment, and (3) granting summary judgment.

We conclude that Staten has failed to demonstrate that the trial court erred in its rulings and, consequently, will affirm the judgment.

FACTS

Ordinarily, in an appeal from a summary judgment, the facts of the case are taken from the separate statements filed by the parties in connection with the motion for summary judgment. (See Cal. Rules of Court, rule 3.1350(d) & (f).)¹ Because the separate statements are not part of the official appellate record here, most of the facts contained in this part are taken from the allegations in Staten's second amended complaint.

During 2002, Staten was an inmate at CCI. Staten's claims are against (1) defendant Arthur Calderon, a former warden of CCI, (2) defendant T. Meadors, a captain at CCI, and (3) defendants John Doe One and Two, prison guards at CCI with search and escort responsibilities (collectively, defendants).

Staten alleges that in 2002 he submitted an inmate request form asking to see a dentist because he had excruciating pain in his teeth. The facility dentist, James L. McCulloch, summoned Staten for an exam on July 31, 2002, took X-rays of Staten's teeth, and discovered cavities. Dr. McCulloch prescribed pain relief medication of

¹All further references to numbered rules are to the California Rules of Court.

ibuprofen and informed Staten to take two pills per day to relieve the pain until Staten could be scheduled for dental treatment to repair the cavities.

While Staten was waiting to be scheduled for treatment, a riot occurred at CCI involving Black and Hispanic inmates. Warden Calderon immediately declared an emergency lockdown of CCI. After a subsequent evaluation of the incident, he placed Blacks and Hispanics on lockdown until further notice.

Staten alleges the lockdown and the way it was implemented by the prison guards caused a delay in his dental treatment and receipt of pain medication. Staten alleges his pain medication ran out and his attempts to get more were unsuccessful. Consequently, on September 10, 2002, Staten submitted an emergency appeal grievance requesting a refill of his pain medication.

Staten alleges that Dr. McCulloch made many unsuccessful attempts to get prison guards to escort Staten to the dental facility for treatment and eventually succeeded on December 4, 2002. When Staten arrived at the dental facility, he asked Dr. McCulloch why it took so long for him to receive dental treatment. Dr. McCulloch told him that he had called prison guards many times during the three-month period requesting that Staten be escorted to the dental facility for treatment, but they failed to escort Staten to the dental facility in a timely fashion. In a handwritten note dated December 4, 2002, Dr. McCulloch stated that Staten had been seen on six occasions from May 12, 2002, to December 4, 2002, and that his “complaint is with custody not with dental.”

Staten alleged Warden Calderon committed wrongful acts or omission by (1) breaching a duty to provide more dental physicians to treat prison inmates with emergency dental needs, (2) failing to properly manage and train his subordinates to comply with requests by medical and dental physicians to summon inmates for care during a lockdown and (3) ignoring the insubordination of his subordinates who were not complying with the operating procedure of summoning and escorting prison inmates when requested by a physician.

Staten alleged that Captain Meadors was responsible for supervising and training correctional officers to respond effectively when directed by a medical physician to summon a prison inmate for immediate medical attention. Staten alleged that Captain

“Meadors failed to properly manage and train his subordinates to adhere to the procedure for dental summons by a physician requesting for a prison guard to summon and escort a prison inmate for dental treatment. [Citation.] [¶] On lockdown conditions, it’s the Captain’s responsibility to ensure that all prison guards cooperate with all dental and medical physicians when they request for an inmate to be escorted to the medical or dental facility for immediate treatment.” (Underscoring omitted.)

Staten further asserted that Captain Meadors had knowledge that Dr. McCulloch had requested prison guards to summon Staten for immediate dental treatment and that the prison guards had failed to summon and escort Staten in accordance with proper procedures. According to Staten, although Captain Meadors was aware of the problem, he failed to correct it and thereby breached his duty.

Staten alleged that John Doe One and Two both failed to comply with Dr. McCulloch’s orders to summon and escort Staten to the dental facility, and their delays caused him injury.

Staten alleged that the negligence of the defendants resulted in his suffering three months of pain and permanent damage to his teeth, including the loss of one tooth. Staten requested \$125,000 in compensatory damages and \$125,000 in punitive damages.

PROCEEDINGS

On May 1, 2009, defendants filed a motion for summary judgment, or in the alternative, summary adjudication of issues. On July 17, 2009, the superior court held a telephonic hearing on the motion for summary judgment. On the same day, the court filed a minute order granting the motion for summary judgment. Staten appealed.

RECORD ON APPEAL

Staten, who is representing himself in this lawsuit, had difficulty completing the form used to designate the record on appeal. As a result of this difficulty, the record on appeal omits many of the documents relevant to the issues Staten has raised in this court.

These omissions in the appellate record play a central role in the resolution of this appeal because they have affected Staten's ability to carry his burden of affirmatively demonstrating trial court error. Consequently, in this part of the opinion we summarize the events and documents related to the creation of the appellate record.

Staten submitted a notice of appeal that was filed on August 11, 2009. At the same time, Staten also submitted an appellant's notice designating record on appeal dated August 9, 2009, using Judicial Council form APP-003 (rev. Jan. 1, 2008). Item 1 of that form lists five different methods for providing the Court of Appeal with a record of the documents filed with the trial court.² Instead of designating one method, Staten checked boxes for all five methods. For this and other errors, the clerk of the superior court returned the form APP-003 to Staten with a form cover letter dated August 11, 2009. The cover letter stated the designation of record was being returned for the following reason: "Other: Does not conform to California Rules of Court."

On August 24, 2009, the clerk of the superior court filed a notice re default of appeal that notified Staten he failed to file a notice to prepare a reporter's transcript and a notice designating the contents of the clerk's transcript within the time allowed. In mid-September 2009, the clerk of the superior court filed a "Clerk's Affidavit" stating that Staten had not cured the default and requesting dismissal of the appeal.

Based on the clerk's affidavit, on September 18, 2009, this court filed an order dismissing the appeal pursuant to rule 8.140(b)(1).

On September 29, 2009, Staten filed a document with this court that he labeled as a notice of motion for reconsideration of appeal rights. Staten's document included a number of attachments, including his original form APP-003 and the form cover letter from the clerk of the superior court stating that Staten's form APP-003 did not conform to the California Rules of Court. Staten asked this court to allow him to correct the

²The methods are labeled "a" through "e" and consist of (a) a clerk's transcript, (b) an appendix under rule 8.124, (c) the original superior court file under rule 8.128, (d) an agreed statement, and (e) a settled statement.

deficiencies in the appellate documents because the letter from the clerk of the superior court did not inform him what errors needed to be changed or which particular rules he had violated.

On October 1, 2009, this court vacated its order dismissing the appeal and granted Staten “15 days from the date of this order to comply with ... rules 8.120, 8.121 and 8.122.”

On October 20, 2009, the clerk of the superior court filed a second notice of default on appeal stating that Staten had failed to file a notice designating the contents of the clerk’s transcript. On the same day, Staten filed with this court a request for an additional 15 days due to the prison law library being closed because the library technician was ill and no substitute was assigned to replace her. This court granted the extension.

On November 5, 2009, this court received from Staten a form APP-003 dated October 29, 2009. In this form, Staten checked the boxes indicating that he was (1) requesting a clerk’s transcript and (2) requesting it be provided at no cost because he could not afford to pay for it.

On the top of the second page of the form APP-003, under the heading “NOTICE DESIGNATING CLERK’S TRANSCRIPT” are instructions that begin: “You must complete this section if you checked item 1.a. above indicating that you elect to use a clerk’s transcript as the record” Staten, however, did not complete the second page of the form APP-003 concerning the documents to be included in the clerk’s transcript.

Item 3 of the form APP-003 lists “required documents” that the clerk automatically will include in the clerk’s transcript. Item 4 is where the appellant designates the additional documents he or she wants included in the clerk’s transcript. Typically, when an appeal is taken from a judgment entered after a motion for summary judgment has been granted, the additional documents would include the latest version of the plaintiff’s complaint, the defendant’s answer, the motion for summary judgment and its supporting documents (such as the separate statement of undisputed material facts and

declarations), the opposition to the motion for summary judgment and supporting papers (such as the separate statement, declarations, and evidentiary objections), and the defendant's reply papers. As stated previously, Staten did not designate any additional documents. Therefore, his notice was limited to the required documents listed in item 3, which includes only (a) the notice of appeal, (b) the notice designating the record on appeal, (c) the judgment or order appealed from, (d) the notice of entry of judgment, if any, (e) certain posttrial or postjudgment motions, if any, (f) any rulings on the posttrial or postjudgment motions, and (g) the register of actions or docket.

In addition, on page 3 of the form APP-003 dated October 29, 2009, Staten did not complete item 8, which is used to identify the oral proceedings in the trial court that the appellant wants included in the reporter's transcript. Thus, although Staten indicated in item 2.b of his form APP-003 that he elected to proceed with a reporter's transcript as the record of oral proceedings in the trial court, he did not comply with the parenthetical instruction to "*fill out the reporter's transcript section on page 3 of this form.*"

Also, on November 5, 2009, this court filed Staten's document labeled "notice of motion that appellant has complied with the court's order dated 10/1/09: appellant now request the court process the appeal at this juncture." (Capitalization omitted.) This document is difficult to interpret and includes recitations of large portions of rules 8.120, 8.121 and 8.122 (the rules cited in this court's order of Oct. 1, 2009).

For example, Staten's notice of motion recited parts of rule 8.120 and then requested the lower court to transmit reporter's transcripts covering the oral arguments held by conference call on May 21, 2009, and July 17, 2009, the latter being when the trial court granted the motion for summary judgment. Staten also stated: "So if the court would excuse [Staten] for not producing every portion of the record, and perhaps allow him to proceed on the dates of 5/21/09 (See Exhibit (B) and 7/17/09 see (Exhibit (C))."³

³What Staten meant by this statement is unclear. One way to interpret it is that Staten thought he was required to designate all parts of the record, but that the only reporter's transcripts he wanted to use were of the two hearings mentioned.

(Underscoring omitted.) In addition, Staten stated that if he was not in compliance with rules 8.120, 8.121 and 8.122, he was requesting the court's assistance in purveying the information needed to process his appeal, which request he was making because of the law library's limited version of the California Rules of Court.

Staten's notice of motion also (1) recited rule 8.122's requirement that documents designated for the clerk's transcript must be identified by title and filing date, (2) stated that the filing dates of the papers filed by him were not available to him, and (3) then referenced the dates of various minute orders entered by the trial court.

On November 6, 2009, this court denied Staten's "NOTICE OF MOTION [&] REQUEST THE COURT PROCESS THE APPEAL AT THIS JUNCTURE" and stated it would take no further action in the appeal until appellant cured the default noticed by the clerk of the superior court on October 20, 2009.

In early December 2009, the clerk of the superior court filed a clerk's affidavit stating the default filed on October 20, 2009, had not been cured and requesting dismissal of the appeal. On December 9, 2009, this court filed an order dismissing the appeal pursuant to rule 8.140(b)(1) because Staten had failed to perform the acts necessary to procure the record.

On December 21, 2009, Staten filed a motion for reconsideration stating that the prison library had inadequate forms and applications necessary and that he had submitted an adjusted application on December 7, 2009, but the lower court refused to process that adjusted designation of the record because of this court's December 9, 2009, order.

In response to Staten's motion, on January 6, 2010, this court ordered the appeal reinstated and granted Staten 20 days "to cure the defects specified in the notice of default sent on October 20, 2009, or inform the Kern County Superior Court Clerk that appellant is electing to proceed without the preparation of portions of the appellate record."

On January 25, 2010, the clerk of the superior court filed a form APP-003 submitted by Staten and dated January 21, 2010. This form indicated that Staten had

elected to use a clerk's transcript as the method for creating an appellate record of the documents filed in the superior court. Staten did not fill in any information in the space provided in items 4, 5 and 6 of the form APP-003. As a result, the only documents designated for the clerk's transcript were the required documents listed in item 3 of the form APP-003.

On February 1, 2010, this court received from Staten (1) a copy of his form APP-003 dated January 21, 2010, (2) a copy of his civil case information sheet, (3) a copy of the "notice of motion to cure the defects of appellant's request for designation of the record" (capitalization and underscoring omitted) that Staten had included with his form APP-003 dated January 21, 2010, and (4) the exhibits he had attached to the motion. The motion, which was directed to the superior court, is difficult to interpret. For example, Staten references that he lacks necessary information because prison officials have misplaced his legal property and then requests "this court 'Transmit' only those transcripts in accordance with CRC 8.122(b) inefforts [*sic*] to move forward with the appeal." The last sentence of the motion states: "So without further delay, ... Staten, is electing to proceed without preparation of portions of the record (See Exhibit (A)[, the Court of Appeal's order of January 6, 2010.])"

The record before us does not contain any ruling from the superior court on Staten's motion. Staten's documents dated January 21, 2010, resulted in the clerk of the superior court filing a clerk's transcript with this court on February 26, 2010. The clerk's transcript apparently was intended to provide the "required documents" listed in item 3 of the January 21, 2010, form APP-003 submitted by Staten. The clerk's transcript contains four documents: (1) a minute order dated July 17, 2009, (2) Staten's notice of appeal, (3) a notice of filing appeal, and (4) Staten's form APP-003 filed on January 25, 2010. The clerk's transcript does not contain a register of actions or docket, which is designated in item 3.g of the form APP-003.

In April 2010, defendants filed their brief in this court and simultaneously filed a motion to augment the record on appeal. The motion sought to expand the appellate

record to include (1) Staten's second amended complaint, (2) defendants' June 15, 2009, opposition to Staten motion to compel further discovery, (3) an index of evidence in support of defendants' motion for summary judgment, and (4) the July 17, 2009, minute order granting the motion for summary judgment. Staten did not oppose the motion and, therefore, this court granted the motion to augment in an order filed May 17, 2010.

The last set of documents before this court was presented as an attachment to Staten's reply brief. It appears Staten submitted these documents in an effort to counter defendants' arguments that the record on appeal was inadequate to show error. Staten labeled the documents as exhibits A through W and they contain a total of over 125 pages. These documents do not include defendants' notice of motion for summary judgment, defendants' separate statement, or defendants' memorandum of points and authorities in support of their summary judgment motion.

DISCUSSION

I. Motion to Compel Further Discovery Responses

A. Points Raised on Appeal

Staten propounded discovery in an attempt to learn, among other things, the identities of the search and escort officers who failed to follow Dr. McCulloch's instructions to escort Staten to the dental facility for treatment. Frustrated by what Staten describes as "the evasive action taken by defense counsel" in retrieving the information requested, Staten filed a motion to compel further discovery responses.

Staten's opening brief describes (1) his April 2009 motion to compel further responses to his request for the production of documents and his requests for admissions, (2) the trial court's denial of the motion as procedurally defective, (3) his amended motion to compel, (4) the opposition to that motion, and (5) the failure of officials at the Corcoran State Prison to summon him for the conference call for the June 25, 2009,

hearing on the motion to compel.⁴ Staten asserts that had he participated telephonically in the hearing he would have been able to establish that further discovery was necessary.

In his reply brief, Staten appears to expand the description of his amended motion to compel by stating it sought further discovery responses from defendant Calderon *and defendant Meadors*, although there is nothing in the record to indicate discovery requests were propounded to defendant Meadors.

B. Defendants' Response

Defendants argue that the trial court did not abuse its discretion in denying the motion to compel because the motion was procedurally infirm on a number of grounds and also failed on the merits. Defendants' appellate brief mentions only responses from defendant Calderon.

The procedural infirmities raised by defendants include (1) Staten's failure to appear telephonically at the hearing, (2) his failure to file the amended motion to compel within the 45 days provided by statute, and (3) his failure to provide adequate notice of the hearing set for June 25, 2009. Defendants also argue Calderon's responses were not deficient because (1) Calderon was unable to produce documents because he is retired and no longer has any access to the documents requested and (2) his denial of each request for admissions adequately sets forth the reasons for the denial.

C. Record on Appeal

The clerk's transcript, defendants' motion to augment the record, and the 23 documents that Staten filed with this court as attachments to his reply brief do not contain (1) Staten's initial motion to compel, (2) his amended motion to compel, (3) the trial court's order denying the latter motion, (4) the discovery requests, or (5) the responses provided to the discovery requests.

⁴We note that Staten's reply brief includes the exact same discussion under the heading "DISCOVERY" that he set forth on pages 30 through 35 of his opening brief.

Some documents, however, are available to this court. The motion to augment included a copy of defendants' June 15, 2009, opposition to Staten's motion to compel further discovery. The opposition summarized some of Staten's requests for documents and Calderon's objections and responses. It also quoted all five of Staten's requests for admissions and Calderon's denial and reasons for his denial, but excluded Calderon's objections.

Exhibit O of Staten's attachments to his reply brief is a copy of defendants' opposition to his motion to compel, which opposition was dated May 14, 2009. Exhibit P of Staten's attachments is a copy of defense counsel's April 7, 2009, letter responding to Staten's meet and confer letter regarding the discovery responses.

D. Standard of Review

Appellate courts apply an abuse of discretion standard of review to a trial court's denial of a motion to compel discovery. (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 891.)

A general principle of appellate practice is that an "order of the lower court is *presumed correct*." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Under this principle, an appellant must affirmatively show an error occurred. (*Ibid.*)

E. Inadequate Showing of Error

We will skip the procedural issues and consider whether Staten has affirmatively shown that the trial court abused its discretion by not requiring defendant Calderon to produce documents or provide further responses to the requests for admissions.

1. Document production

A party demanding documents may bring a motion to compel further responses on one or more of the following three grounds. First, the responding party's statement of compliance with the demand is incomplete. (Code Civ. Proc., § 2031.310, subd. (a)(1).) Second, the responding party's representation of inability to comply is inadequate, incomplete or evasive. (*Id.*, subd. (a)(2).) Third, an objection in the response is without merit or too general. (*Id.*, subd. (a)(3).)

In this case, defendant Calderon responded to Staten's document request by stating he was unable to comply because he was retired from his former position as warden of CCI and no longer had a legal right of access to any of the documents requested. Thus, defendant Calderon asserted that he had no responsive documents in his possession, custody or control.

Under the applicable statutory provisions, the question is whether this statement of an inability to comply with the document request "is inadequate, incomplete or evasive." (Code Civ. Proc., § 2031.310, subd. (a)(2).) We conclude that defendant Calderon's response provided an adequate and complete statement of the reason why he could not provide the documents requested. As such, the response was straightforward, not evasive. Therefore, Staten has failed to affirmatively show the existence of any of the statutory grounds that justify an order compelling further responses to a request for the production of documents. Consequently, the denial of Staten's motion to compel further responses from Calderon to the request for the production of documents will be upheld.

2. Requests for admissions

After receiving responses to requests for admissions, the requesting party may file a motion to compel further responses "if that party deems that either or both of the following apply: [¶] (1) An answer to a particular request is evasive or incomplete. [¶] (2) An objection to a particular request is without merit or too general." (Code Civ. Proc., § 2033.290, subd. (a).)

Although Staten's appellate briefs assert his motion to compel was filed in reaction to the evasive action taken by defense counsel and the failure to retrieve the information requested, Staten fails to discuss any of the specific responses to the request for admissions provided by Calderon or explain how any response was evasive or incomplete. Staten's failure to address why any of Calderon's denials or Calderon's reasons for his denials were "evasive or incomplete" leads to the conclusion that Staten has failed to carry his burden of affirmatively showing error. (Cf. *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [reviewing court need not discuss point merely

asserted by appellant without argument or authority]; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282-283 [contentions bereft of factual underpinning, record references, argument or authority deemed waived].)

Therefore, we conclude that the trial court did not abuse its discretion when it denied Staten's motion to compel further discovery responses.

II. Request to Continue Hearing on Motion for Summary Judgment

A. Rules Governing Continuances and Standard of Review

When a party opposing a motion for summary judgment has not had a sufficient opportunity to marshal evidence, subdivision (h) of Code of Civil Procedure section 437c provides a way for that party to obtain additional time to get evidence needed to oppose the motion:

“If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.”

This provision mandates a continuance of a summary judgment hearing upon a good faith showing by sworn statement that additional time is needed to obtain facts essential to justify opposition to the motion. (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253-254.) When no sworn statement is submitted or when the sworn statement fails to make the showing required by statute, a continuance of the summary judgment hearing is not mandatory. (*Id.* at p. 254.) Thus, when a request for a continuance is not accompanied by a sworn statement that complies with subdivision (h) of Code of Civil Procedure section 437c and the trial court denies that request, appellate courts review the denial of the continuance for an abuse of discretion. (*Cooksey*, at p. 254.)

To establish an abuse of discretion, an appellant must show that the trial court exceeded the bounds of reason. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.) For example, when two or more inferences can be reasonably drawn from the facts and one of those inferences justifies the trial court's decision, the reviewing court may not draw the other inference and overturn the decision of the trial court. (*Ibid.*)

B. Diligent Pursuit of Discovery

Defendants contend that the trial court's denial of Staten's request for a continuance can be upheld on many grounds, including the fact that he had ample time to conduct any essential discovery before the motion for summary judgment was filed. (See *Hoffman v. Sports Car Club of America* (1986) 180 Cal.App.3d 119, 127 [trial court did not abuse its discretion in denying request for continuance made over two and a half years after lawsuit was filed].)

Staten submitted his own declaration in opposition to the motion for summary judgment. It was exhibit B in the attachments to his reply brief. Staten's declaration describes his difficulty in obtaining information from Dr. McCulloch, particularly the identity of the search and escort officers who ignored Dr. McCulloch's directions to bring Staten in for dental treatment. The declaration does not address the timing question and why Staten did not obtain the information from Dr. McCulloch (1) in this lawsuit in a manner authorized by the California statutes governing discovery or (2) in his parallel federal lawsuit in accordance with the federal rules of discovery (*Dwight A. Staten v. Edward S. Alameida, Jr. et al.* (E.D.Cal., Dec. 6, 2007, No. 1:06-cv-00631-OOW-GSA-PC) [2007 WL 4287827, 2007 U.S. Dist. Lexis 95790].)

Because Staten's declaration does not justify his failure to pursue the appropriate methods of discovery earlier in the proceeding, we conclude that he has failed to demonstrate that the trial court erred in denying his request for a continuance.⁵

⁵We note that Staten's status as a self-representing inmate does not, in itself, justify his failure to conduct discovery in a manner consistent with the applicable rules. (See *Gamet v.*

Accordingly, the trial court's order granting summary judgment cannot be overturned on the ground that the trial court should have granted Staten a continuance to conduct additional discovery.

III. Order Granting Summary Judgment

A. Standard of Review

A motion for summary judgment “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).)

Appellate courts determine whether a triable issue of material fact exists by conducting an independent review of “the record that was before the trial court when it ruled on defendants’ motion.” (*Martinez v. Combs* (2010) 49 Cal.4th 35, 68.) When conducting its independent review of the record that was before the trial court, this court uses the three-step analysis set forth in *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591. First, we identify the issues framed by the pleadings. (*Id.* at p. 1602.) Second, we determine whether the moving party has made the requisite showing to justify a judgment in its favor. (*Ibid.*) Third, we determine whether the opposition demonstrates the existence of a triable issue of material fact. (*Ibid.*)

B. Application to Appellate Record

In this appeal, defendants’ motion to augment the appellate record contains a copy of Staten’s second amended complaint. Thus, it is possible for this court to complete the first step of the required analysis and identify the issues framed by the pleadings.

The appellate record, however, does not contain most of defendants’ moving papers. For instance, defendants’ separate statement of undisputed facts and their memorandum of points and authorities in support of the summary judgment motion are not included in the record. Because of these gaps in the appellate record, it is not

Blanchard (2001) 91 Cal.App.4th 1276, 1284-1285 [self-representing litigants are not exempt from statutes or court rules governing procedure].)

possible for this court to complete an independent review of “the record that was before the trial court when it ruled on defendants’ motion.” (*Martinez v. Combs, supra*, 49 Cal.4th at p. 68.) Because we cannot complete the second step of the required three-step analysis, we cannot reach the conclusion that the trial court committed error when it granted summary judgment in defendants’ favor.

Therefore, the order granting the motion for summary judgment must be upheld.

DISPOSITION

The judgment is affirmed.

DAWSON, J.

WE CONCUR:

CORNELL, Acting P.J.

GOMES, J.